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February 28, 2014

BY ECF
Honorable Victor V. Pohorelsky
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Tareem Mcdonald v. City of New York et. als.,* 13 Civ. 4529 (ARR)(VVP)

Your Honor:

I represent plaintiff in the above-referenced matter. I write pursuant to Fed. R. Civ. P. 37(a)(1)(B)(iii)-(iv) to request an Order compelling defendants to provide (1) settlement amounts for the defendant officers' prior civil rights lawsuits; (2) appropriate substantiated and unsubstantiated disciplinary records for incidents post-dating plaintiff's arrest; and (3) photographs of the defendant officers. Pursuant to Rule 37(a)(1) and Local Civil Rule 37.3(a), plaintiff's counsel certifies that he has conferred extensively with defense counsel in good faith prior to making this application in an effort to obtain the relief requested without Court intervention.

SETTLEMENT AMOUNTS OF PRIOR CIVIL RIGHTS LAWSUITS

Plaintiff respectfully requests that defendants be compelled to produce the settlement amounts, paid by defendants to separate plaintiffs in other civil rights lawsuits. Defendants refuse to disclose this information claiming it is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Federal Rule of Civil Procedure 26(b)(1) allows a party, through discovery, to obtain "any non-privileged matter relevant to any party's claim or defense." The rule contemplates that discovery is broader than admissibility, specifically stating that "relevant information need not be admissible at trial if it is reasonably calculated to lead to the discovery of admissible evidence." See Fed, R, Civ. P.26(b)(1). "Discovery is to be considered relevant where there is *any possibility* that the information sought may be relevant to the subject matter of the action. *Cox v. McLellan*, 174 F.R.D. 32, 34 (S.D.N.Y. 1997) (emphasis in original).

Plaintiff has satisfied this burden of production. The settlement amounts are relevant to the plaintiff many reasons. Specifically, in preparing to depose defendants and further investigate his claim, plaintiff will be far more likely to make deeper inquiry concerning cases where the officers were required to pay greater settlement amounts. This investigation could result in the identification of relevant witnesses.

Defendants' refusal to produce this information is squarely inconsistent with the express policy of the Corporation Counsel of the City of New York (the "City"). As Your Honor is aware, The City recently abandoned its longstanding practice of including settlement amounts in public filings. *See* City is No Longer Reporting the Costs of Its Settlements of Federal Cases, NY TIMES, Dec. 9, 2012.[1] However, City officials, including authorized spokesperson Kate O'Brien Ahlers, have stated that the City **"freely provide[s] information about settlements," including settlement amounts, "upon request," and that such cooperation by the New York City Law D "has always been forthcoming and will always be forthcoming."** *Id.* By setting forth such a policy but declining to produce this information even in the context of a formal discovery proceeding, the City is failing to abide by its promise, despite an acknowledged compelling public interest in the availability of this information.

DEFENDANTS' POST-INCIDENT DISCIPLINARY RECORDS

Plaintiff moves to compel production of all Civilian Complaint Review Board ("CCRB") records, Internal Affairs Bureau ("IAB") records, and internal NYPD disciplinary records involving complaints of a similar nature, or relating false statements, whether substantiated or unsubstantiated, concerning the defendant police officers. Defendants agree to produce records of substantiated and unsubstantiated complaints made within the past ten years; but refuses to produce such complaints for incidents post-dating plaintiff's arrest.

Defendants must also produce complaints and investigations concerning defendant officers that post-date the incident at issue in this lawsuit. Such documents are discoverable because the records may lead to evidence that is admissible under

[1] http://www.nytimes.com/2012/12/10/nyregion/new-york-city-no-longer-discloses-federal-court-settlements.html?_r=0

F.R.E. 404(b). *See Ismail v. Cohen,* 899 F.2d 183, 188 (2d Cir. 1990) (affirming trial court's admission into evidence of testimony from complainant in post-incident CCRB complaint); *United States v. Germosen*, 139 F.3d 120, 128 (2d Cir. 1998) ("The fact that the [similar act] involved a subsequent rather than prior act is of no moment"); *United States v. Ramirez*, 894 F.2d 565, 569 (2d Cir. 1990) ("Subsequent act" evidence may be admitted under Rule 404(b)); *Moore v. City of New York,* CV 05 5127 (CBA) (VVP), 2006 WL 1134146, *1 (E.D.N.Y. April 27, 2006) (post-incident investigations regarding a police officer defendant may be relevant to issues of pattern, intent, and absence of mistake); *Barrett*, 237 F.R.D. at 41 ("CCRB investigations that post-date the filing of the current action could be relevant to this case and should be disclosed").

Accordingly, plaintiff respectfully requests that the Court compel production of the CCRB, IAB and CPI summaries, the closing reports, and the underlying case files (reflecting relevant allegations or false statements) of the defendant officers, including complaints post-dating this incident.

PHOTOGRAPHS OF THE DEFENDANTS

Law in Second Circuit on this topic is well developed. Photographs of civil rights defendants are discoverable and must be produced. *See Beckles v. City of New York*, 08-CV-3687 (RJH) (JCF), 2010 WL 1841714, *5 (S.D.N.Y. May 10, 2010) (ordering the production of photos of seven responding officers with no "filler" photos); *Snoussi v. Bivona*, 05-CV-3133 (RJD) (LB), 2009 WL 701007 (E.D.N.Y. Mar 3, 2009) (compelling producing of photographs without preconditions and denying request for a protective order); *Murphy v. West*, 533 F. Supp. 2d 312, 317 (W.D.N.Y. 2008) ("Defendants are ordered to provide plaintiff with photographs of [officers]…"). *See also, Plair v. City of New York*, 10-CV-8177 (RWS) (S.D.N.Y. May 29, 2012) (Docket Entry 58); Chavez *v. City of New York*, 11-CV-117 (PAE) (S.D.N.Y. Dec. 23, 2011) (Docket Entry 25); *Joyner v. City of New York*, 12-CV-177 (ENV) (E.D.N.Y. Aug. 1, 2012) (Docket Entry 16); *Harrison v. City of New York*, 11-CV-2762 (SLT) (E.D.N.Y. April 13, 2012) (Docket Entry 18). Plaintiff requests that the Court order defendants to produce photographs of the defendant officers.

For the foregoing reasons, plaintiff respectfully requests that the court compel production of the settlement amounts, disciplinary records and defendants' photographs.

Thank you for your consideration of this request.

Respectfully submitted,

/ss/

Robert Marinelli

Cc: Jennifer Koduru, Esq.